

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY  D.C.

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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TN, MEMPHIS

RICKY BENSON,

Plaintiff,

vs.

STATE OF TENNESSEE, et al.,

Defendants.

X
X
X
X
X
X
X
X
X
X
X

No. 04-2578-M1/V

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Plaintiff Ricky Benson, RNI number 204821 and Tennessee Department of Correction prisoner number 241219, who was, at the time he commenced this lawsuit, an inmate at the Shelby County Detention Center in Memphis, filed a pro se complaint pursuant to 42 U.S.C. § 1983 on July 27, 2004. On September 17, 2004, plaintiff filed a motion for summary judgment that indicated that he had been released from prison. The Court issued an order on January 3, 2005 directing the plaintiff, within thirty (30) days, to file a nonprisoner in forma pauperis affidavit or remit the full \$150 civil filing fee. The order further provided that "[f]ailure to comply with result in dismissal of this action, pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute." 01/03/05 Order at 2. Because the plaintiff failed to comply with, or otherwise respond to, that order within the time specified, the Court issued an order on February 28, 2005 dismissing the case without prejudice, pursuant to Fed. R. Civ. P.

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41(b), for failure to prosecute. Judgment was entered on March 1, 2005.

On May 2, 2005, plaintiff filed a notice of change of address and a motion for summary judgment in this closed case. The Sixth Circuit has held that "it is proper for a district court to deem a complaint 'filed' only when IFP status is granted or the appropriate filing fee is paid, rather than at the time a complaint is delivered to the clerk of a court." Truitt v. County of Wayne, 148 F.3d 644, 648 (6th Cir. 1998). This case was dismissed for failure to prosecute due to the plaintiff's failure to file an in forma pauperis affidavit or pay the civil filing fee. As this action was never properly commenced, within the meaning of Truitt, and as it is now closed, it is not appropriate for the Court to consider any substantive motion filed in this case. The plaintiff's motion is DENIED.

The Clerk shall send a copy of this order to the United States Court of Appeals for the Sixth Circuit.

IT IS SO ORDERED this 29 day of August, 2005.



JON PHIPPS McCALLA
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 16 in case 2:04-CV-02578 was distributed by fax, mail, or direct printing on August 30, 2005 to the parties listed.

Ricky Benson
SCCC
05114097
201 Poplar
Memphis, TN 38103

Honorable Jon McCalla
US DISTRICT COURT